

**FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579**

IN THE MATTER OF THE CLAIM OF

THE GILLETTE COMPANY

**Under the International Claims Settlement
Act of 1949, as amended**

Claim No. CU-2350

Decision No. CU- 3827

PROPOSED DECISION

This claim against the Government of Cuba under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$113,738.53, was presented by THE GILLETTE COMPANY, based upon the intervention of a wholly-owned Cuban subsidiary and debts due from the Cuban subsidiary.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term "property" means any property, right or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated, intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Section 502(1)(B) of the Act defines the term "national of the United States" as a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity.

The record shows that claimant was organized under the laws of Delaware, and that at all pertinent times more than 50% of claimant's outstanding capital stock was owned by nationals of the United States .

An authorized official of claimant has certified that as of November 1, 1962 over 98% of claimant's outstanding capital stock was owned by nationals of the United States. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

Stock Interest

On the basis of the evidence of record, including copies of stock certificates and statements of officials of claimant, the Commission finds that claimant owned a 100% stock interest in the Razor Blade Company of Cuba, S.A., located at Avenida Ranchero Boyeros at Capdevilla, Havana, Cuba.

The evidence establishes that by Resolution No. 517, issued on March 20, 1961, Compania Gillette De Cuba, S.A., another wholly-owned subsidiary of claimant, which is the subject of Claim No. CU-2326 and will be decided on its own merits, and which also occupied offices at the same address as the Razor Blade Company of Cuba, S.A., was declared intervened by the Cuban Minister of Labor pursuant to Law 647 of November 24, 1959. The Commission finds that the Razor Blade Company of Cuba, S.A. was effectively intervened on March 20, 1961.

The Razor Blade Company of Cuba, S.A. was organized under the laws of Cuba and does not qualify as a corporate "national of the United States" defined under Section 502(1)(B) of the Act as a corporation or other legal entity organized under the laws of the United States, or any State, the District of Columbia or the Commonwealth of Puerto Rico, whose ownership is

vested to the extent of 50 per centum or more in natural persons who are citizens of the United States. In this type of situation, it has been held previously that a stockholder in such a corporation is entitled to file a claim based upon his ownership interest therein. (See Claim of Parke, Davis & Company, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.)

The Act provides in Section 503(a) that in making determinations with respect to the validity and amount of claims and value of properties, rights, or interests taken, the Commission shall take into account the basis of valuation most appropriate to the property and equitable to the claimant, including but not limited to fair market value, book value, going concern value, or cost of replacement.

The question, in all cases, will be to determine the basis of valuation which, under the particular circumstances, is "most appropriate to the property and equitable to the claimant." The Commission has concluded that this phraseology does not differ from the international legal standard that would normally prevail in the evaluation of nationalized property, and that it is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider; i.e., fair market value, book value, going concern value, or cost of replacement.

It further appears from the evidence of record that the Razor Blade Company of Cuba, S.A. had been incorporated in Cuba on October 25, 1929, and that it ceased operations on November 30, 1944 when its assets were sold to Compania Gillette de Cuba, S.A. The record contains a copy of the minutes of a meeting of the Board of Directors of the Razor Blade Company of Cuba, S.A., held in Boston, Massachusetts on June 14, 1960. At that meeting it was decided that this Cuban corporation should open a bank account with the Havana Branch of the First National Bank of Boston, and that a dividend should be declared.

The record includes a copy of a balance sheet for the Razor Blade Company of Cuba, S.A., as of February 28, 1961, which shows the following,

the Cuban peso being on a par with the United States dollar:

ASSETS (1)

Cash in bank (3)		<u>\$ 113,793.00</u>
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LIABILITIES (1)

Dividends payable (Note 2)		88,682.00
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Capital stock and surplus:

Capital stock authorized and issued	\$ 25,000.00	
Unappropriated earned surplus	<u>111.00</u>	<u>25,111.00</u>

\$ 113,793.00

- Notes: 1. All figures expressed in nearest Cuban pesos.
2. Dividend declared June 14, 1960.
3. Cash in bank located in Cuba.

The Commission, therefore, finds that the net worth of the Razor Blade Company of Cuba, S.A., or the excess of its assets over its liabilities, was \$25,111.00 on the date of loss, and concludes that claimant sustained a loss in that amount on account of its stock interest, within the meaning of Title V of the Act.

Debt

As noted above, the record shows that the Cuban subsidiary was indebted to claimant in the amount of \$88,682.00. The Commission, therefore, finds that claimant also sustained a loss of a debt in that amount within the meaning of Title V of the Act. (See Claim of Kramer, Marx, Greenlee and Backus, Claim No. CU-0105, 25 FCSC Semiann. Rep. 62 [July-Dec. 1966].)

Accordingly, the aggregate loss sustained by claimant on March 20, 1961 was \$113,793.00.

It will be noted that the total amount of the loss found herein is in excess of the amount asserted by claimant. However, in determining the amount of loss sustained, the Commission is not bound by any lesser or greater amount which may be asserted by claimant as the extent thereof.

The Commission has decided that in certification of loss on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6%

per annum from the date of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644), and in the instant case it is so ordered.

CERTIFICATION OF LOSS

The Commission certifies that THE GILLETTE COMPANY suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended in the amount of One Hundred Thirteen Thousand Seven Hundred Ninety-Three Dollars (\$113,793.00) with interest at 6% per annum from March 20, 1961 to the date of settlement.

Dated at Washington, D.C.,
and entered as the Proposed
Decision of the Commission

AUG 27 1969

Leonard v. F. Sutton

Leonard v. F. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Isidore Freidberg

Isidore Freidberg, Commissioner

NOTICE TO TREASURY: The above-referenced securities may not have been submitted to the Commission or if submitted, may have been returned; accordingly, no payment should be made until claimant establishes retention of the securities for the loss here certified.

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g), as amended, 32 Fed. Reg. 412-13 (1967).)